

§ 162.209

(2) Identifies the attorney-in-fact and the land to be leased; and

(3) Describes the scope of the power granted and any limits thereon.

§ 162.209 When can BIA grant an agricultural lease on behalf of an Indian landowner?

(a) We may grant an agricultural lease on behalf of:

(1) Individuals who are found to be non compos mentis by a court of competent jurisdiction;

(2) Orphaned minors;

(3) The undetermined heirs and devisees of deceased Indian owners;

(4) Individuals who have given us a written power of attorney to lease their land; and

(5) Individuals whose whereabouts are unknown to us, after reasonable attempts are made to locate such individuals; and

(6) The individual Indian landowners of fractionated Indian land, when necessary to protect the interests of the individual Indian landowners.

(b) We may grant an agricultural lease on behalf of all of the individual Indian owners of a fractionated tract, where:

(1) We have provided the Indian landowners with written notice of our intent to grant a lease on their behalf, but the Indian landowners are unable to agree upon a lease during a three-month negotiation period immediately following such notice, or any other notice period established by a tribe under § 162.203(c) of this subpart; and

(2) The land is not being used by an Indian landowner under § 162.104(b) of this part.

§ 162.210 When can BIA grant a permit covering agricultural land?

(a) We may grant a permit covering agricultural land in the same manner as we would grant an agricultural lease under § 162.209 of this part. We may also grant a permit on behalf of individual Indian landowners, without prior notice, if it is impractical to provide notice to the owners and no substantial injury to the land will occur.

(b) We may grant a permit covering agricultural land, but not an agricultural lease, on government land.

25 CFR Ch. I (4–1–06 Edition)

(c) We will not grant a permit on tribal agricultural land, but a tribe may grant a permit, subject to our approval, in the same manner as it would grant a lease under § 162.207(a) of this subpart.

§ 162.211 What type of valuation or evaluation methods will be applied in estimating the fair annual rental of Indian land?

(a) To support the Indian landowners in their negotiations, and to assist in our consideration of whether an agricultural lease is in the Indian landowners' best interest, we must determine the fair annual rental of the land prior to our grant or approval of the lease, unless the land may be leased at less than a fair annual rental under § 162.222(b) through (c) of this subpart.

(b) A fair annual rental may be determined by competitive bidding, appraisal, or any other appropriate valuation method. Where an appraisal or other valuation is needed to determine the fair annual rental, the appraisal or valuation must be prepared in accordance with USPAP.

§ 162.212 When will the BIA advertise Indian land for agricultural leases?

(a) We will generally advertise Indian land for agricultural leasing:

(1) At the request of the Indian landowners; or

(2) Before we grant a lease under § 162.209(b) of this subpart.

(b) Advertisements will provide prospective tenants with notice of any superseding tribal laws and leasing policies that have been made applicable to the land under §§ 162.109 and 162.203 of this part, along with certain standard terms and conditions to be included in the lease. Advertisements will prohibit tenant preferences, and bidders at lease sales will not be afforded any preference, unless a preference in favor of individual Indians is required by a superseding tribal law or leasing policy.

(c) Advertisements will require sealed bids, and they may also provide for further competitive bidding among the prospective tenants at the conclusion of the bid opening. Competitive bidding should be supported, at a minimum, by a market study or rent survey that is consistent with USPAP.